



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 21, 2010

Mr. Donald Jansky  
Assistant General Counsel  
Texas Department of State Health Services  
1100 West 49<sup>th</sup> Street  
Austin, Texas 78756

OR2010-14284

Dear Mr. Jansky:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 394384 (DSHS File No. 17661-2010).

The Texas Department of State Health Services (the "department") received a request for records completed, compiled, obtained, or generated by the department in connection with a Texas Department of Public Safety evaluation of a concealed handgun license for a named individual. You state you have released or will release some information to the requestor. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also received and considered comments from the requestor. *See Gov't Code* § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, the requestor contends, and you acknowledge, the department did not comply with the procedural requirements of the Act. Section 552.301 of the Government Code prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(e) of the Government Code, the governmental body is required to submit to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See id.* § 552.301(e). You state the department received the request for information on July 2, 2010. Thus, the department's

fifteen business day deadline under section 552.301(e) was July 16, 2010. However, you did not submit a copy or representative sample of the information requested to this office until August 9, 2010. Consequently, we agree the department failed to comply with the procedural requirements mandated by section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption the information is public and must be released. Information presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. Because section 552.101 of the Government Code can provide a compelling reason to withhold information, we will consider your arguments under this exception.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information that other statutes make confidential. You raise section 552.101 in conjunction with section 12.097 of the Health and Safety Code, which provides as follows:

(a) All records, reports, and testimony relating to the medical condition of an applicant or license holder:

(1) are for the confidential use of the medical advisory board [of the department], a panel, or the Department of Public Safety of the State of Texas;

(2) are privileged information; and

(3) may not be disclosed to any person or used as evidence in a trial except as provided by Subsection (b).

(b) In a subsequent proceeding under Subchapter H,<sup>1</sup> Chapter 411, Government Code, or Subchapter N,<sup>2</sup> Chapter 521, Transportation Code, the medical standards division [of the department] may provide a copy of the report of the medical advisory board or panel and a medical record or report relating to an applicant or license holder to:

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<sup>1</sup>V.T.C.A., Government Code § 411.171 et seq.

<sup>2</sup>V.T.C.A., Transportation Code § 521.291.

- (1) the Department of Public Safety of the State of Texas;
- (2) the applicant or license holder; and
- (3) the officer who presides at the hearing.

Health & Safety Code § 12.097 (footnotes in original); *see also id.* §§ 12.092(b)(2) (providing for appointment of medical advisory board to assist department in determining whether concealed handgun license applicant or license holder is capable of exercising sound judgment with respect to proper use and storage of a handgun), .095 (providing for medical advisory board opinion or recommendation of department). You indicate the submitted information relates to the medical condition of a license holder and is maintained by the medical advisory board. You do not indicate section 12.097(b) applies in this instance. Based on our review, we conclude the department must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 12.097 of the Health and Safety Code.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Mack T. Harrison  
Assistant Attorney General  
Open Records Division

MTH/em

Ref: ID# 394384

Enc. Submitted documents

c: Requestor  
(w/o enclosures)